



March 13, 1989

RECORDATION NO.

FILED 1425

MAR 17 1989 - 11 05 AM

**Itel Rail Corporation**

55 Francisco Street  
San Francisco, California 94133  
(415) 984-4000  
(415) 781-1035 Fax

**INTERSTATE COMMERCE COMMISSION**

Hon. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

DATE \_\_\_\_\_  
FEE \$ \_\_\_\_\_  
ICC Washington, D.C.

Re: Schedule No. 4 to Lease Agreement dated September 2, 1988,  
between Itel Rail Corporation, Itel Railcar Corporation  
and Florida West Coast Railroad

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Schedule under the Lease Agreement dated September 2, 1988, between Itel Rail Corporation, Itel Railcar Corporation and Florida West Coast Railroad, which was filed with the ICC on October 6, 1988, under Recordation No. 15855.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation and  
Itel Railcar Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Florida West Coast Railroad (Lessee)  
104 N. W. Lancaster Street  
Trenton, Florida 32693

This Schedule adds to the Lease Agreement up to forty-seven (47) 4,600 cubic foot, HTS hopper cars bearing reporting marks FWCR 15700-15750 (n.s.).

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

A handwritten signature in cursive script that reads "patricia schumacker".

Patricia Schumacker  
Legal Department

MAR 17 1989 -11 05 AM

## SCHEDULE NO. 4

INTERSTATE COMMERCE COMMISSION

THIS SCHEDULE No. 4 ("Schedule") to that certain Lease Agreement, (the "Agreement") made as of September 2, 1988 between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and FLORIDA WEST COAST RAILROAD as lessee ("Lessee") is made this 16th day of December, 1988, between ITEL RAIL CORPORATION ("Lessor") and Lessee.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 4, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
2. Lessor hereby leases the following Cars to Lessee in a "as is condition" subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Design.	Description	Numbers	Length	Dimensions No.	
				Inside Width	of Cars
HTS	4600 cubic feet, plate F+, wood chip, open top Hoppers	FWCR 15700- <del>To be 15750 (N.S.)</del> <del>determined</del>	40'7"	9'7"	up to 47

3. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date such Car is remarked ("Delivery") and shall continue as to all of the Cars described in this Schedule for three (3) years from the earlier of (i) the date on which the last Car described in this Schedule was remarked or (ii) sixty (60) days from the date the first Car described in this Schedule was delivered to Lessee's lines (the "Term"). Upon the delivery of the final Car, Lessor shall provide Lessee with a Certificate of Delivery, in the form of Exhibit A attached hereto, including the Delivery date for each Car and the expiration date of the Agreement with respect to the Cars described in this Schedule. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.
4. Lessee agrees to accept from Lessor upon delivery up to forty-seven (47) Cars which have been remarked to Lessee's reporting marks; provided, however, that Lessor is not obligated to provide to Lessee under this Agreement any of the forty-seven railcars. Lessor will notify Lessee of the total number of Cars subject to the Agreement.
5. When a Car has been remarked, it shall be moved to Lessee's railroad line at no cost to Lessor at the earliest time that is consistent with the mutual convenience and economy of the parties. Lessee agrees to pay the rent set forth in the Agreement notwithstanding the fact that Lessee may not have immediate physical possession of the Cars leased hereunder.

6. Lessee shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement. Lessee shall register each Car in UMLER, placing the letters designated by Lessor in owner's field in such a manner that Lessor, or its agent, is allowed access to any required information including but not limited to Train 62 Junction Advices and the Train 65, 67, 71 and 80 Advices with regard to each Car. If Lessee fails to register or improperly registers any Car in UMLER, Lessee shall be responsible for an amount equal to the revenues that would have been earned by such Car had it been properly registered in UMLER.
7. Lessee shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule. Subsection 5.B. of the Agreement shall not apply with respect to such Cars.
8. Lessor agrees to reimburse Lessee, within thirty (30) days of Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by Lessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to any Car, the Agreement, or the delivery of the Cars, which remained unpaid as of the date of the delivery of the Cars to Lessee or which is assessed, levied or imposed during the term of the Agreement, except taxes on income or gross receipts imposed on Lessee or sales or use tax imposed on mileage charges, car hire revenue, or the proceeds of the sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.
9. A.

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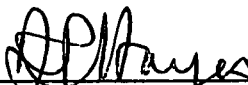
-,
- B. Lessee shall pay to Lessor the Fixed Rent, and all taxes reimbursable to Lessor as additional rent hereunder, on the first day of each month during the Term.
10. A. Lessee agrees to defend, indemnify and hold Lessor harmless from any and all claims, liabilities, losses, damages, costs and expenses (including attorneys' fees) caused by, arising out of, or in connection with the Cars, including the use, possession, operation, maintenance and leasing of the Cars (collectively,

"Damages"), except for any Damages which arise solely from Lessor's negligence.

- B. Lessor agrees to indemnify and hold Lessee harmless from any Damages which arise solely from Lessor's negligence.
- C. The indemnities and assumptions of liability contained in this Agreement shall survive the expiration or termination of the Agreement.
11. Upon the expiration or termination of the Agreement with respect to the Car(s) described in this Schedule, if some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to said tracks subsequent to the time of expiration of this Agreement as to the Cars. Lessee shall, at Lessor's option, provide up to one hundred twenty (120) days' free storage on its railroad tracks for any Car which is either on Lessee's railroad tracks at expiration or is subsequently returned to Lessee's railroad tracks. Said one hundred twenty (120) days shall run either from expiration or from the date such Car is returned to Lessee's railroad line subsequent to expiration, whichever date is later. If requested to do so by Lessor, Lessee shall, at Lessor's option, either move a remarked Car to an interchange point on Lessee's lines selected by Lessor or use its best efforts to load the remarked Car with freight and deliver it to a connecting carrier for shipment.
12. Upon mutual agreement during the Term of this Schedule, Lessee may, if not in default under the Agreement (including this Schedule), exercise the option to purchase any or all of the Cars described in this Schedule by paying to Lessor the applicable amount listed on Exhibit A, attached hereto ("Purchase Amount"), which represents the monthly rental amounts due for the remaining Term of this Schedule.
13. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.
14. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

ITEL RAIL CORPORATION

FLORIDA WEST COAST RAILROAD

By:   
Title: President  
Date: 12-21-88


By:   
Title: President  
Date: 12-16-88

Exhibit A

<u>Month</u>	<u>Payment</u>	<u>Purchase Amount</u>
1	\$90	3150
2	\$90	3060
3	\$90	2970
4	\$90	2880
5	\$90	2790
6	\$90	2700
7	\$90	2610
8	\$90	2520
9	\$90	2430
10	\$90	2340
11	\$90	2250
12	\$90	2160
13	\$90	2070
14	\$90	1980
15	\$90	1890
16	\$90	1800
17	\$90	1710
18	\$90	1620
19	\$90	1530
20	\$90	1440
21	\$90	1350
22	\$90	1260
23	\$90	1170
24	\$90	1080
25	\$90	990
26	\$90	900
27	\$90	810
28	\$90	720
29	\$90	630
30	\$90	540
31	\$90	450
32	\$90	360
33	\$90	270
34	\$90	180
35	\$90	90
36	\$90	0

STATE OF CALIFORNIA       )  
                                  ) ss:  
COUNTY OF SAN FRANCISCO )

On this 21st day of December, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Schedule No. 4 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan  
Notary Public



STATE OF Florida       )  
                                  ) ss:  
COUNTY OF Gilchrist )

On this 16th day of December, 1988, before me personally appeared Clyde S. Forbes, to me personally known, who being by me duly sworn says that such person is President of Florida West Coast that the foregoing Schedule No. 4 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Mary J. Dunn  
Notary Public

Notary Public, Florida, State at Large  
My Commission Expires December 1, 1990

CERTIFICATE OF DELIVERY DATE

Exhibit A to Schedule No. 4 dated as of \_\_\_\_\_ to Lease Agreement dated as of \_\_\_\_\_, by and between ITEL RAIL CORPORATION ("Lessor") and FLORIDA WEST COAST RAILROAD ("Lessee"). :

CAR REPORTING  
MARKS AND NUMBER

DELIVERY DATE

The last day of the Initial Term for the above referenced Cars shall be

\_\_\_\_\_.

ITEL RAIL CORPORATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_